

## **BOARD OF ZONING ADJUSTMENT MINUTES**

**August 27, 2013**

Regular meeting of the Clay County Board of Zoning Adjustment, Commission Hearing Room, 3<sup>rd</sup> Floor, County Administration Building, One Courthouse Square, Liberty, Missouri.

Call to Order

@ 5:50 pm: David Fulton, Chairman

Roll Call: Matthew Tapp, Director

Members Present: David Fulton, David Fricke, Brian Klopfenstein, and Vernon Reed

Members Absent: Mike Johnson

Staff Present: Matthew Tapp, Director  
Debbie Viviano, Planner  
Tim Flook, Assistant County Counselor  
Angie Stokes, Secretary

**Mr. Fulton:** Okay let's call the regular August 27, 2013 meeting of Clay County Board of Zoning and Adjustment to order. Would you call roll please.

**Mr. Tapp:** Mike Johnson?

**Mr. Johnson:** No answer.

**Mr. Tapp:** Brian Klopfenstein?

**Mr. Klopfenstein:** Here.

**Mr. Tapp:** David Fricke?

**Mr. Fricke:** Here.

**Mr. Tapp:** David Fulton?

**Mr. Fulton:** Here.

**Mr. Tapp:** Vernon Reed?

**Mr. Reed:** Here.

**Mr. Fulton:** Okay everyone has received the minutes of the meeting from January the 22<sup>nd</sup> you all have them had a chance to look over the minutes is there any additions or corrections to the minutes of the meeting?

**Mr. Fricke:** Mr. Chairman I make a motion that we approve the minutes of January 22, 2013.

**Mr. Fulton:** The motion has been made to approve the minutes of January 22<sup>nd</sup> of the Clay County Board of Zoning Adjustment is there a second?

**Mr. Klopfenstein:** I'll second.

**Mr. Fulton:** All those in favor signify by saying aye.

**All:** Aye.

**Mr. Fulton:** Let it be noted that the minutes have been approved unanimously.

**Final Vote**                      **4/0**      **Approved**      **January 22, 2013**  
**BZA Minutes**

**Mr. Fulton:** Now at this time we will swear in anyone that came this evening that wants to make any testimony what so ever. We have one case plus some other business if there is any other. So at this point if anyone would like to or plan to make any comments this evening or even if you don't plan to and you may want to if you would stand up we'll just swear everyone in if you would like. Just stand up if you would and you'll state your name and do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God? If you would each one repeat your name so it's on the record.

**Mr. McQuerry:** James McQuerry, 16918 Plattsburg Road, Kearney, MO 64060.

**Mr. Hayward:** Steve Hayward, 16714 Plattsburg Road, Kearney, MO.

**Ms. Hayward:** Jan Hayward, 16714 Plattsburg Road, Kearney, MO.

**Mr. Fulton:** Okay let it be noted, you may be seated, that these three individuals have been duly sworn in. Now at this stage since the Hayward's are neighbors and since I'm currently farming land in question I will step aside recuse myself and step aside and turn the proceedings of this meeting over to our Vice-Chairman Mr. Fricke.

**Mr. Fricke:** Okay, just give me a minute to bring us up to date on the agenda, we'll first hear from the applicant or anyone who wishes to speak in the applicants favor or otherwise ask questions, once that is done we will then hear from anyone who wants to speak in opposition or to ask questions from the floor about the Zoning Adjustment action. During all this time the members of the Board of Zoning Adjustment is free to ask questions and so be prepared to answer them when you come up to address the Commission. Will you please come to the microphone because it is being recorded and we want your important statements on record. So with that we'll open the public hearing on Case Number 13-102BZA which is a request for variances to Section 151-6.3B (5b) of the 2011 Clay County Land Development Code, pertaining to the minimum side setback so forth and so on. When you come to the microphone give your name so that we'll know who you are when the typist types it up. Matt would you like to give a brief overlay of what we are looking at and some comments from your department.

**Mr. Tapp:** Yes Mr. Fricke, I would be glad to. Right before your consideration is a request for three variances by the property owners and the applicants. The first of which is a setback for the existing detached accessory building i.e. a garage as indicated on E-3 is the garage in question, the existing farm house is E-2 shown on the staff report which is in front of you. They're requesting a variance, a 13.7 foot side setback variance as the building has existed for a while at least in its original location therefore it was not done as an action of the property owners/applicants and so they are requesting a variance for the side setback there and then there are two other additional request for variances from our code. One of which is the lot width to depth ratio which in laymen's terms basically prevents flag lots or very long linear lots so in order to do that in code you basically say you have to have so much street frontage per the depth of the lot so it's not a real long linear lot so you want to have no more than a four times the depth equal to the lot width and that is measured by the front lot line distance multiplied by four from midpoint on the front line to the midpoint on the back lot line. And as you'll notice the way that the proposed lot is situated or proposed there is a piece that kind of a pan handle so to speak

or a L shape, the various pronounced L shape so the lot the goes back and to the north and doing so that makes that depth even further back than what it's maybe perhaps more than a square compact lot maybe. The third variance is the minimum lot width and their requesting a 7.41 plus or minus foot variance of the lot width, which is 300 feet and that is measured from the front build line which I believe in the proposed zoning is at the 50 foot back off the front lot line and that is measured right now at 292.59 or a 7.41 foot variance or the lot width. Those two mainly steam from on the south property line between proposed lots 2A and 3A is because there is an existing Mid-America Gas pipeline on the south and a standard land development principal you really don't want to have lot lines go over pipeline easements as much as possible so the Hayward's are definitely limited on the south and to the north and may review their letter that's attached as part of the staff report. The north line that they are proposing is limited by topography and a fence line so that's where those two variances request arise from and again you can see their justification in their letter that's highlighted in the staff report but also as an attachment to the staff report. If the BZA finds that all three variances or one or two meet the approval criteria as outlined from the second to the third page of the staff report A, B, C and D then the Board may grant the three variances. The first approval criteria basically states that it "will not be contrary to the public interest and will not adversely affect the rights of adjacent property owners". Actually I am sorry, the first one is "the conditions are unique" so it's unique not an unnecessary or as an unnecessary hardship and not just a mere inconvenience. The second of which is that "not contrary to public interest", it will not adversely affect or negal the affect the rights of adjacent property owners, the third is again the unnecessary hardship piece and then the final piece is it does "not adversely affect the general public health safety and welfare". With that I will close the summary of the staff report.

**Mr. Fricke:** Thank you Matt, I would ask that you make your report plus the letter from the Hayward's as part of the record.

**Mr. Tapp:** Yes, thank you Mr. Fricke.

**Mr. Fricke:** That was a very good petitioned letter, very clear and consist, with that we would now hear from anyone in attendance who wishes to speak in favor of the petition. Mr. Hayward if you would like to give us a brief at the microphone, identify yourself please and tell us why you are asking us to do this.

**Mr. Hayward:** Thank you, Steve Hayward asking for those variances specifically, it's kind of Jan and's I intention to be straight up with you. We built the house and originally sub-divided the property into two 20's and we're really looking at a future point in time, selling the house and the six acres would be our intention and retaining the majority of that property. We would like to have the adjoining middle lot that's identified as the buffer zone between what we would do with the farm property, but ultimately our intention is to retain the entirety of that tract, but in our interest we looked at that middle lot as being a good buffer if we decided to change that and we've looked at various alternatives and keeping that middle lot as the buffer we like to have a large acreage both of us grew up on farms so we like a little more acreage than most as so that was as alternatives go having that middle lot gave us both an alternatives and hopefully it doesn't take away from the ascetics of the property the other property owners.

Hopefully, values will be increased and so forth and so on we're hopeful that the petitions would be approved as stated.

**Mr. Fricke:** Very good, now if you just stay where you are, any questions from the Commission? Mr. Reed.

**Mr. Reed:** You made reference to the middle lot and I am not sure I understand what is the middle lot? I thought this was two parcels.

**Mr. Hayward:** Actually its three parcels total. We have the exiting residence that is located on, I always have to refer back to lot is it 1A, 2A and 3A, so 1A would be our existing home that we have...

**Mr. Fricke:** That is what you plan to sell?

**Mr. Hayward:** That is the intention at this point, but obviously...

**Mr. Reed:** Yes I understand.

**Mr. Hayward:** Plans can change but that's what we're looking into doing. The middle lot would allow us the option, which would be Lot-2A of either keeping the house and six acres and having that buffer between us but then also having the option of if we decided to and which that is our intention to sell the house and six acres and go up on the farm place and either remodel the farm place or build a new home up there is our intention and so we still have that acreage between us. So it's a three parcel scenario.

**Mr. Reed:** What are you saying about Lot-3A, you're going to continue to own that or has it already been sold.

**Mr. Hayward:** No it's we have no buyers at this point in time our intention is that we're making sure we have our ducks in a row if we decided to do that our intention is not to sell it at this point I have no buyers for either of the tracks at this point, but we're also empty nesters too and we have a larger house that we constructed so we have two kids that are no longer with us so our intention would be to downsize and so we would be selling the house and six acres ultimately and then retaining majority of the property that you see in Lot-3A and 2A.

**Mr. Fricke:** Okay.

**Mr. Reed:** So basically your options are to continue to live in where you are or sell that property and build a new house on either of the two lots.

**Mr. Hayward:** That would be an option our preferences is to build it on 3A is really our intention. Now obviously long term down the road when I completely downsize the option I think economically and from a good business standpoint is that the middle track can be ultimately sold in its self individually and the area typically carries, you know there's certain other larger acreages in the area but if you go on further north Saddlebrooke is another subdivision where they've done typically 10 acre tracks in that area and it doesn't take away from the aesthetics of the area and would be consistent with what you typically see in that area even though it's more of a southern piece of property that's the way I look at it and we may have property owners that kind of agree with that concept, but some may have a different opinion on that but that's what we typically see in our market where we are at it's not 40 acre tracks.

**Mr. Reed:** I see thank you.

**Mr. Klopfenstein:** I am sorry I am lost, I was trying to following. It's me not you. Okay you guys live in Lot-1A.

**Mr. Hayward:** That is correct.

**Mr. Klopfenstein:** In the corner.

**Mr. Hayward:** That's correct.

**Mr. Klopfenstein:** Alright so the first request is for the garage, which is on Lot-3A.

**Mr. Hayward:** The Lot 3A garage was constructed 50+ years ago when we originally bought the full 40+ acre track.

**Mr. Klopfenstein:** The second request is for 2A, you are making a third lot.

**Mr. Hayward:** The third lot is the reason why...

**Mr. Klopfenstein:** Which is 2A.

**Mr. Hayward:** Which is 2A, and we have a road frontage we're not making that because of the easement that we have with the pipeline and so that was that request and ultimately the request for Lot-3A for the outbuildings there were there with the existing old home place. That would be our preferable building spot in the future.

**Mr. Klopfenstein:** Okay.

**Mr. Hayward:** And so we want to put ourselves in a position when we construct that we don't have to come back hopefully to do a variance relative to that particular situation where the house is just a small five-ten feet difference between where the existing farm place is and that shed that is sitting there currently.

**Mr. Klopfenstein:** Alright, so then the third thing is the fence line is that also a proposed change as well?

**Mr. Hayward:** The fence line where the lot is actually already mapped out and Lot-1A we have an existing vinyl fence that encompasses the entirety of that track if you will and then there's a creek that runs really on the I guess on the west end of the property so when you look at the track it really is encompassed with the fence line and so that's what we are intending to do.

**Mr. Klopfenstein:** So the variances for the width and the depth really apply to 2A not to 1A?

**Mr. Hayward:** That is correct.

**Mr. Tapp:** Correct.

**Mr. Klopfenstein:** Finally I am on the same page. Thank you.

**Mr. Hayward:** You bet.

**Mr. Klopfenstein:** It's me not you.

**Mr. Hayward:** I maybe say too much so it could be me.

**Mr. Klopfenstein:** I telling you it's me.

**Mr. Fricke:** You're doing very well Mr. Hayward. Anything else? If not well thank you.

**Mr. Hayward:** Thank you appreciate your time.

**Mr. Fricke:** You bet anyone else present who wishes to speak in favor of the request for variance? Nobody? We'll close that section and ask if there is anyone who wishes to speak in opposition? We have an interested party here.

**Ms. Hayward:** Jan Hayward and also the property owner along with Stephen Hayward. I wanted to, because I know you are looking at this from a codes standpoint, and I just I am really glad that the aerial photograph is up there it does help a lot to kind of see what is normal code and what you would normally want to do might not fit the uniqueness of that property I am hoping that you can see that with the aerial photo, it's even better, I don't know if you had an opportunity to go by and see the property but the topography of the way the land in the middle lot area dips down and then comes up to a higher elevation following code it's not usable in that area anyway for a property owner and the real usable property area for that land is where it's wider and it's sits on a higher elevation and so even though it doesn't meet code we feel like it fits the uniqueness of the property to divide it this way. I don't know if that helps provide any clarification.

**Mr. Fricke:** Any questions of Ms. Hayward? Thank you very much. No one else wishes to speak in favor of or in opposition or ask questions we'll close the public...

**Mr. Klopfenstein:** *(Inaudible)*

**Mr. Fricke:** No they're not; you got to stand up if you want to talk.

**Mr. Klopfenstein:** Did we swear you in?

**Mr. Fricke:** Yes. We'll close that part of the public hearing and ask now that Board of Commissioners discuss this among ourselves and let's reach a decision on it this evening.

**Mr. Klopfenstein:** Mr. Chairman I will make a motion that as to each of these three variance applications each one meets all four of the conditions set out. In that I believe the evidence is clear that the conditions are unique to the subject property and that the variance is not a result of the owner's intentional action not only for the width and depth of Lot-2A but also for the variance from Lot-3A which is the farm house and the garage. I also will move that under Criteria B that each of the separate three variances are not contrary to the public interest and will not adversely affect the rights of adjacent property owners or residents. C that as to each of the three variance requests they will not constitute an unnecessary hardship on the property owner represented in the application and finally that the variance will not adversely affect the public health, safety, or general welfare, nor destroy the intent of the Comprehensive Plan as to each of the three variance requests.

**Mr. Fricke:** You have developed a good history.

**Mr. Klopfenstein:** I'm trying, I'm just trying.

**Mr. Fricke:** Very fine, any comments or a second?

**Mr. Reed:** I'll second the motion.

**Mr. Fricke:** Okay we have a motion and a second for approval, would you call the roll Mr. Tapp.

**Mr. Tapp:** Yes, Brain Klopfenstein?

**Mr. Klopfenstein:** Yes.

**Mr. Tapp:** David Fricke?

**Mr. Fricke:** Yes.

**Mr. Tapp:** Vernon Reed?

**Mr. Reed:** Yes.

**Final Vote     3/0     Approved     Case 13-102BZA**  
**Stephen and Jan Hayward**

**Mr. Fricke:** Okay anyone else have anything that they would like to include at this point? Want to talk about the senior prom or anything? We've got a little time here.

**Mr. Tapp:** No not at this time.

**Mr. Fricke:** If there is nothing coming before the Commission after that we'll listen for a motion for a dismissal.

**Mr. Reed:** I move we adjourn.

**Mr. Klopfenstein:** I second.

**Mr. Fricke:** We are adjourned.

**Meeting Adjourned**

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*Chairman, Board of Zoning Adjustment*

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*Secretary, Board of Zoning Adjustment*

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*Recording Secretary*